

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHEPARD SANDERS,

No C-10-3702 VRW (PR)

Petitioner,

v

ORDER DISMISSING PETITION AS
SECOND OR SUCCESSIVE

RANDY GROUNDS, Warden,

Respondent.

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Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a second or successive petition for a writ of habeas corpus under 28 USC § 2254. Petitioner was convicted by a jury of second degree robbery on October 15, 1997. The jury also found that petitioner had suffered two prior juvenile adjudications, which counted as "strikes" under California's Three Strikes law. The court sentenced petitioner to 25 years to life in prison.

On appeal, the California Court of Appeal affirmed petitioner's robbery conviction, but found that the trial court did not make the necessary findings to use one of his prior juvenile

1 adjudication as a strike. The court reversed petitioner's sentence
2 and remanded the case to the trial court to make the necessary
3 findings.

4 On remand, the trial court made the required finding to
5 use petitioner's prior adjudication as a strike and again sentenced
6 him to 25 years to life. The California Court of Appeal affirmed
7 the sentence in an unpublished opinion, rejecting petitioner's claim
8 of ineffective assistance of appellate counsel for failure to
9 challenge the sufficiency of the evidence of the prior conviction
10 allegations. See People v Sanders/In re Sanders, Nos A091833,
11 A093545, 2002 WL 1154585, at *5-6 (Cal Ct App May 30, 2002). The
12 Supreme Court of California denied review on August 14, 2002. Id.

13 Petitioner then filed a federal petition for a writ of
14 habeas corpus, see Sanders v Brown, No C 02-4195 VRW (PR) (ND Cal
15 filed Sept 4, 2002), which the court denied. See id, Doc #15 (April
16 19, 2004 (order denying petition)). Among several of the claims the
17 court rejected was ineffective assistance of appellate counsel due
18 to counsel's failure to raise the sufficiency of the evidence of the
19 prior strike convictions alleged against petitioner. See id, Doc
20 #15 at 21-24. On August 20, 2010, petitioner filed the instant
21 petition for habeas corpus, raising essentially the same claim. See
22 Sanders v Grounds, No C 10-3702-VRW (PR) (ND Cal filed August 20,
23 2010), Doc #1 at 6-8.

24 A second or successive petition may not be filed in the
25 district court unless the petitioner first obtains from the
26 appropriate federal court of appeals an order authorizing the
27 district court to consider the petition. 28 USC § 2244(b)(3)(A).

1 Petitioner has not obtained an order from the Ninth Circuit
2 authorizing this court to consider his current petition.
3 Accordingly, the petition is DISMISSED without prejudice subject to
4 refiling if petitioner obtains the necessary order.

5 The clerk shall close the file and terminate any pending
6 motions as moot.

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8 IT IS SO ORDERED.

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11 VAUGHN R WALKER
12 United States District Chief Judge
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